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October 10, 2007

DEPARTMENT OF ENERGY
OFFICE OF HEARINGS AND APPEALS

Hearing Officer's Decision

Name of Case: Personnel Security Hearing
Date of Filing: April 20, 2007
Case Number: TSO-0491

This decision concerns the eligibility of XXXXXXXXXX (hereinafter referred to as "the Individual") to maintain an access authorization under the regulations set forth at 10 C.F.R. Part 710, entitled "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material." The local Department of Energy (DOE) security office (the LSO) suspended the Individual's access authorization under the provisions of Part 710. This decision considers whether, on the basis of the evidence and testimony in this proceeding, the Individual's access authorization should be restored.¹ For the reasons stated below, I find that the Individual's access authorization should be restored.

I. BACKGROUND

The present case concerns an individual alleged to be "a user of alcohol habitually to excess." The events leading to this proceeding began when a coworker of the Individual detected alcohol on the Individual's breath at work. The coworker reported this concern to a supervisor and the Individual was asked to submit to a blood alcohol level (BAL) test. That test indicated that the Individual had a BAL of .03.² A personnel security interview (PSI) of the Individual was conducted. The Individual was then asked to submit to an examination by a DOE consultant psychiatrist (the DOE Psychiatrist). On November 29, 2006, the DOE Psychiatrist conducted a forensic psychiatric examination of the Individual. DOE Psychiatrist's Report at 2. In addition to conducting this examination, the DOE Psychiatrist reviewed selected portions of the Individual's security

¹ An access authorization is an administrative determination that an individual is eligible for access to classified matter or special nuclear material. 10 C.F.R. § 710.5. Such authorization will be referred to in this Decision as an access authorization or a security clearance.

² The Individual is subject to the DOE's Human Reliability Program (HRP). 10 C.F.R. Part 712. The HRP's maximum allowable BAL threshold is .02. Tr. at 64.

file and selected medical records. On December 13, 2005, the DOE Psychiatrist issued a report in which she opined that the Individual habitually used alcohol to excess.³

The DOE Psychiatrist further opined that the Individual was not sufficiently rehabilitated and reformed to resolve the security concerns raised by her alleged habitual use of alcohol. However, the DOE Psychiatrist wrote:

At the time of my evaluation, [the Individual] had completed seven out of a 10 week program of alcohol education and counseling. She planned to resume treatment with her regular therapist after completion of this program. Once she completes this recommended program, she would have adequate *rehabilitation* for her alcohol problem.

DOE Exhibit 3 at 14 (emphasis supplied). The DOE Psychiatrist further opined that the Individual needed to abstain from alcohol for a period of at least six months in order to establish *reformation* from her pattern of excessive drinking. DOE Exhibit 3 at 15.

After receipt of the DOE Psychiatrist's Report, the LSO initiated an administrative review proceeding. *See* 10 C.F.R. § 710.9. The LSO then issued a letter notifying the Individual that it possessed information that raised a substantial doubt concerning her eligibility for access authorization (the Notification Letter). The Notification Letter alleges that the Individual "has been, or is, a user of alcohol habitually to excess." 10 C.F.R. § 710.8(j) (Criterion J).

On April 4, 2007, the Individual filed a request for a hearing with the LSO. This request was forwarded to the Office of Hearings and Appeals (OHA) and I was appointed as Hearing Officer.

On July 24, 2007, a hearing was held. At the hearing, the DOE Office presented one witness: the DOE Psychiatrist. The Individual presented three witnesses: her spouse, her supervisor, and a psychologist with the Human Reliability Program (HRP) (the HRP Psychologist). The Individual also testified on her own behalf.

II. STANDARD OF REVIEW

The Hearing Officer's role in this proceeding is to evaluate the evidence presented by the agency and the Individual, and to render a decision based on that evidence. *See* 10 C.F.R. § 710.27(a). The regulations state that "[t]he decision as to access authorization is a comprehensive, common-sense judgment, made after consideration of all the relevant information, favorable or unfavorable, as to whether the granting or continuation of access authorization would not endanger the common defense and security and would be

³ The DOE Psychiatrist did not diagnose the Individual with Alcohol Abuse or Dependence. The DOE Psychiatrist also concluded that the Individual had suffered from an Adjustment Disorder. However, the DOE Psychiatrist opined that the Adjustment Disorder had been resolved. DOE Exhibit 3 at 15. The DOE Psychiatrist further noted that the Adjustment Disorder "is not likely to cause a significant defect in judgment or reliability." DOE Exhibit 3 at 15.

clearly consistent with the national interest.” 10 C.F.R. § 710.7(a). I have considered the following factors in rendering this opinion: the nature, extent, and seriousness of the conduct; the circumstances surrounding the conduct, including knowledgeable participation; the frequency and recency of the conduct; the Individual's age and maturity at the time of the conduct; the voluntariness of the Individual's participation; the absence or presence of rehabilitation or reformation and other pertinent behavioral changes; the motivation for the conduct, the potential for pressure, coercion, exploitation, or duress; the likelihood of continuation or recurrence; and other relevant and material factors. *See* 10 C.F.R. §§ 710.7(c), 710.27(a). The discussion below reflects my application of these factors to the testimony and exhibits presented by both sides in this case.

III. FINDINGS OF LAW AND FACT

In the present case, the LSO is concerned that the Individual has been drinking habitually to excess. The Notification Letter does not allege that the Individual suffers from Alcohol Abuse or Dependence. The bases for the accusation that the Individual habitually drinks to excess are set forth in the Notification Letter. The Notification Letter states:

(1) The DOE Psychiatrist opined that the Individual habitually used alcohol to excess.⁴

(2) A Clinical Mental Health Counselor evaluating the Individual for treatment diagnosed the Individual with Alcohol Abuse.⁵

(3) On October 4, 2006, the Individual was administered a blood alcohol test after a coworker reported that she had alcohol on her breath. That blood alcohol test revealed that the Individual had a blood alcohol level of .030.

(4) In 2003 or 2004, the Individual's physician told her to abstain from using alcohol due to a stomach ulcer.

⁴ The Part 710 regulations do not require a determination that a person is or has been a user of alcohol habitually to excess be supported by the opinion of a medical professional. *See* 10 C.F.R. Section 710.8(j).

⁵ This tentative diagnosis was later ruled out by the Clinical Mental Health Counselor. The Individual submitted a letter to the HRP Psychologist from her treating Clinical Mental Health Counselor, which appears in the record as the Individual's Exhibit 4. The Clinical Mental Health Counselor's letter states in pertinent part

The previous rule out of Alcohol Abuse, Unspecified should be considered resolved as [the Individual] did not meet the criteria for recurrent or repeated problems related to alcohol. . . . During the course of treatment it became evident that problem interactions with her daughter were not related to the use of alcohol.

(5) The Individual admitted abusing alcohol.

(6) The Individual's daughter expressed concern about the Individual's alcohol use.

Statement of Charges at 1-2.

The "Revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information" list a number of conditions related to alcohol use that raise a security concern and that may be disqualifying. Specifically relevant to the instant case, the Revised Adjudicative Guidelines list the following conditions:

(b) alcohol-related incidents at work, such as reporting for work or duty in an intoxicated or impaired condition, or drinking on the job, regardless of whether the individual is diagnosed as an alcohol abuser or alcohol dependent;

(c) habitual or binge consumption of alcohol to the point of impaired judgment or reliability, regardless of whether the individual is diagnosed as an alcohol abuser or alcohol dependent.

Guideline G of the Revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information issued on December 29, 2005, by the Assistant to the President for National Security Affairs, The Whitehouse. As discussed above, the record shows that the Individual was found to have an excessive BAL while at work. *See note 2, supra*. Moreover, the Individual acknowledges that she was engaging in binge drinking on the evening prior to that incident. Accordingly, it is clear that the Individual was habitually using alcohol to excess.

In the present case, the Individual has convinced me that she has ceased her use of alcohol and intends to refrain from alcohol use in the future. The Individual frankly testified that her use of alcohol had been excessive and problematic. Transcript of Hearing (Tr.) at 47, 52. The Individual testified that her father and brother are recovering alcoholics and she recognizes that she is at risk of becoming an alcoholic. Tr. at 47. The Individual testified that she had begun to use alcohol as a crutch to help her cope with serious family problems. Tr. at 41, 47, 51-52.

After she tested positive for alcohol at work, the Individual was evaluated by the HRP Psychologist. The HRP Psychologist recommended that the Individual abstain from using alcohol. Tr. at 44. The Individual convincingly testified that she has completely abstained from using alcohol since October 3, 2006. Tr. at 47-48. Thus the Individual had remained abstinent for nine months at the time of the hearing. The Individual testified that she plans to continue abstaining from alcohol use. Tr. at 48.

The Individual also testified that the HRP Psychologist recommended that she obtain alcohol treatment. Tr. at 44-45. The Individual testified that she has done so. Tr. at 45.

The counselor obtained by the Individual recommended that the Individual undergo ten sessions of alcohol treatment counseling. Tr. at 45. The Individual testified that she found this treatment to be so helpful, that she underwent twenty sessions of alcohol treatment counseling instead. Tr. at 45. The Individual testified that counseling and treatment have helped her and that she intended to continue to use those resources. Tr. at 56.

The HRP Psychologist testified on the Individual's behalf as well. The HRP Psychologist testified that, shortly after the Individual's BAL was found to be excessive, he was asked to conduct an assessment of the Individual's fitness for duty. Tr. at 63. The HRP Psychologist testified that he has met with the Individual on five or six occasions. Tr. at 68. The HRP Psychologist testified that the Individual's progress was "very positive." Tr. at 65. The HRP Psychologist testified that he has been in communication with the Individual's treating counselor who reported to him that the Individual has been making positive progress. Tr. at 65-66. The HRP Psychologist further testified that the Individual had been undergoing twice weekly unannounced breath alcohol testing. Tr. at 65.⁶ The test results have all been negative. Tr. at 65. The HRP Psychologist testified that he was convinced that the Individual is "genuine in her recovery." Tr. at 65. The HRP Psychologist testified that he had no concerns about the Individual's suitability for the HRP or a "Q" clearance. Tr. at 65, 67.

The Individual presented the testimony of her supervisor, himself a recovering alcoholic, who indicated that the Individual was an excellent employee and showed no signs of a continuing alcohol problem. Tr. at 75-76. The Individual's spouse testified that he has not observed the Individual using alcohol since October 2, 2006, the date on which alcohol was detected on her breath. Tr. at 57-58, 62-63.

The DOE Psychiatrist testified that the Individual does not have any medically diagnosable alcohol disorder. Tr. at 80, 82, 90-91. However, she was of the opinion that the Individual had used alcohol to excess on a habitual basis at the time she tested positive at her workplace. Tr. at 80. The DOE Psychiatrist noted that the Individual fully complied with her treatment program. Tr. at 90-92. The DOE Psychiatrist testified that the Individual fully recognized that she was in danger of developing a serious alcohol problem. Tr. at 79-80, 84. The DOE Psychiatrist further opined that the Individual fully recognized the danger posed to her by alcohol and was sincerely determined to address her issues with alcohol. Tr. at 85. The DOE Psychiatrist testified that the Individual is unlikely to return to "at risk" drinking behavior. Tr. at 87-88. Most importantly, the DOE Psychiatrist testified that the Individual had fulfilled or exceeded her treatment recommendations and is now adequately rehabilitated and reformed. Tr. at 91-92.

The Individual submitted the sworn transcript of a deposition (the Deposition Transcript), at which the DOE Counsel was present, taken of a Consulting Psychiatrist (the Consulting Psychiatrist). The Consulting Psychiatrist is an expert in the field of treating

⁶ The Individual has also submitted copies of the test result reports, which document that she tested uniformly negative. Individual's Exhibit 6.

substance abuse.⁷ The Consulting Psychiatrist testified that he had read the report prepared by the DOE Psychiatrist and fully agreed with its conclusions. Deposition Transcript at 10. The Consulting Psychiatrist testified that the Individual recognized that her drinking had become a problem and had taken action to address it. *Id.* at 18. The Consulting Psychiatrist indicated that the Individual is neither alcohol dependant nor suffers from alcohol abuse. *Id.* at 27-28. The Consulting Psychiatrist opined that even though the Individual does not meet the criteria for an alcohol disorder, she is, and will always be, at risk and “drinking would always be potentially problematic for her.” *Id.* at 20. In the opinion of the Consulting Psychiatrist, the Individual has received more than sufficient counseling and has exceeded the period of abstinence from alcohol use that he would recommend. *Id.* at 29-30. The Consulting Psychiatrist testified that he was “impressed by [the Individual] and her commitment to take care of herself and her problems.” *Id.* at 45. The Consulting Psychiatrist opined that the Individual’s prognosis is excellent. *Id.* at 45.

All three of the experts who have provided testimony in this case agree that the Individual is reformed and rehabilitated from her excessive alcohol use. Accordingly, I am convinced that the Individual has resolved the security concerns raised by the DOE under Criterion J.

IV. CONCLUSION

For the reasons set forth above, I conclude that the Individual has resolved the security concerns raised under Criterion J. Therefore, the Individual has demonstrated that restoring her security clearance would not endanger the common defense and would be clearly consistent with the national interest. Accordingly, the Individual's access authorization should be restored at this time. The LSO may seek review of this Decision by an Appeal Panel under the procedures set forth at 10 C.F.R. § 710.28.

Steven L. Fine
Hearing Officer
Office of Hearings and Appeals

Date: October 10, 2007

⁷ The Consulting Psychiatrist did not testify at the hearing.